

Christopher R. Poole

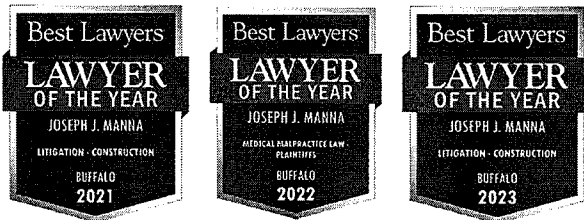
From: Joseph J. Manna
Sent: Wednesday, July 3, 2024 7:56 AM
To: Elisha Teibel
Cc: Brian Crosby; Melissa Morton; Katie M. Daley; Christopher R. Poole; Robert Corp
Subject: RE: [EXTERNAL] - RE: Gannon v. Niagara County
Attachments: DOC_20240703_07531163574.pdf

Here are the executed letter and order. You will note that I added a new paragraph 2 to the proposed order. If you have an objection to it, please let me know. Thank you.



Joseph J. Manna
Attorney at Law

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TEL 716 849 1333 x396 | FAX 716 855 1580
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From: Elisha Teibel <eteibel@gmclaw.com>
Sent: Tuesday, July 2, 2024 2:06 PM
To: Joseph J. Manna <JManna@lglaw.com>
Cc: Brian Crosby <bcrosby@gmclaw.com>; Melissa Morton <mmorton@gmclaw.com>; Katie M. Daley <kdaley@lglaw.com>; Christopher R. Poole <cpoole@lglaw.com>; Robert Corp <rcorp@lglaw.com>
Subject: RE: [EXTERNAL] - RE: Gannon v. Niagara County

Hi Joe,

Attached are our proposed submissions to the Court for your review. You'll note that we have a line for your signature at the end of the letter which we will /s/ for e-filing. If both documents meet with your approval, kindly sign and send us scans of same and we will e-file them as soon as possible. Thank you.



**GIBSON
McASKILL
CROSBY**

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Associate
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From: Joseph J. Manna <JManna@lglaw.com>
Sent: Tuesday, July 2, 2024 10:43 AM
To: Brian Crosby <bcrosby@gmclaw.com>
Cc: Melissa Morton <mmorton@gmclaw.com>; Katie M. Daley <kdaley@lglaw.com>; Christopher R. Poole <cpoole@lglaw.com>; Robert Corp <rcorp@lglaw.com>
Subject: RE: [EXTERNAL] - RE: Gannon v. Niagara County

Brian,

Thank you for sending the below. We agree with the MTD scheduling and also with the idea that you will withdraw the current MTD without prejudice to file another one. If you send us a proposed joint letter agreement to file with the court, I will turn it around quickly.

In terms of discovery, we will be filing a motion for limited discovery pending resolution of the MTD. We will be seeking more information from your client about disclosures it made to others, who specifically made those disclosures and additional information from Tess Stewart. I doubt that that information changes your mind, but I tell you if you might want to discuss it.

Thank you.



From: Brian Crosby <bcrosby@gmclaw.com>
Sent: Friday, June 28, 2024 11:34 AM
To: Joseph J. Manna <JManna@lglaw.com>
Cc: Melissa Morton <mmorton@gmclaw.com>; Katie M. Daley <kdaley@lglaw.com>; Christopher R. Poole <cpoole@lglaw.com>; Robert Corp <rcorp@lglaw.com>
Subject: RE: [EXTERNAL] - RE: Gannon v. Niagara County

Joe,

We are planning to move to dismiss the first amended complaint and are fine with proposing a briefing schedule to the Court given your availability. Please advise if you approve of the following:

Moving Papers: due by July 26, 2024
Opposition Papers: due by August 30, 2024
Reply Papers: due by September 27, 2024

With regard to our pending motion to dismiss the complaint, it is possible that the Court may issue a text order resolving this matter in the coming days in light of the first amended complaint that was just filed. Nonetheless, we will agree to withdraw our pending motion to dismiss the complaint as you request provided that you confirm in writing that said withdrawal will not be considered a waiver of our right to bring a motion to dismiss relative to the first amended complaint. We propose drafting a letter motion to be submitted jointly to the Court, which discusses our agreement to withdraw the pending motion to dismiss the complaint as well as the proposed briefing schedule for the anticipated motion to dismiss the first amended complaint, and which encloses a proposed stipulated order to that effect. We would circulate drafts for you to review prior to submitting same to the Court.

As for discovery, our position is that discovery should be stayed while a motion to dismiss is pending. As such, we intend to move for a stay of discovery in connection with our motion to dismiss the first amended complaint.

Thanks,
Brian

From: Joseph J. Manna <JManna@lglaw.com>
Sent: Thursday, June 27, 2024 12:13 PM
To: Brian Crosby <bcrosby@gmclaw.com>
Cc: Melissa Morton <mmorton@gmclaw.com>; Katie M. Daley <kdaley@lglaw.com>; Christopher R. Poole <cpoole@lglaw.com>; Robert Corp <rcorp@lglaw.com>
Subject: [EXTERNAL] - RE: Gannon v. Niagara County

Caution: External Email

Brian & Melissa:

If you will be making a motion to dismiss again, I will want to reach an agreement on the briefing because I will be in Italy from July 22 to August 5. So, while I do not have an objection to an extension, I

will likewise need one if you intend to file another motion. Could you let me know and perhaps suggest a schedule in the event you intend to make another motion?

Second, how do you want to handle the existing motion to dismiss? I do not think it makes much sense to continue to brief that in light of the Amended Complaint. There is case law holding that the filing of an Amended Complaint moots a motion to dismiss, but that is not always the case. I suggest that perhaps you withdraw the current motion to dismiss without prejudice to file a new one against the current Amended Complaint so that I do not have to file opposing papers. What are your thoughts?

Finally, I had asked Brian to set aside some time to have a conference about scheduling so we can get to a court conference. I did not receive a response. I realize that you may take the position that the motion to dismiss needs to be heard first, but from my perspective, it is delaying discovery that I would like to begin. If you will not discuss discovery with me, as the case seems, I will likely file a motion on the issue. One complaint you have in the motion to dismiss is that I have not specified enough facts, but some facts are outside plaintiff's knowledge and require discovery.

I look forward to hearing from you. Thanks.



From: Brian Crosby <bcrosby@gmclaw.com>
Sent: Wednesday, June 26, 2024 3:26 PM
To: Joseph J. Manna <JManna@lglaw.com>
Cc: Melissa Morton <mmorton@gmclaw.com>
Subject: Gannon v. Niagara County

Joe,

We are in receipt of the Amended Complaint which your office filed this afternoon. It is our understanding, per Rule 15, that our response to the Amended Complaint would be due on Wednesday, July 10, 2024. Would you consent to a 30

day adjournment to respond to the Amended Complaint? Unfortunately, due to the upcoming holiday and prior commitments, the existing deadline would be difficult to comply with.

Thank you for your consideration.

Brian

Brian P. Crosby, Esq.

Partner

GIBSON, McASKILL & CROSBY, LLP

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**GIBSON
McASKILL
CROSBY**

Brian P. Crosby, Esq. | Partner
Ext. 1134
bcrosby@gmclaw.com

July 2, 2024

VIA CM-ECF & E-MAIL

Honorable John L. Sinatra, Jr.
United States District Judge
United States District Court
Western District of New York
2 Niagara Street
Buffalo, New York 14202
[E-mail: sinatra@nywd.uscourts.gov]

**RE: *Kaitlynn Gannon v. Sheriff Michael J. Filicetti, Niagara County Sheriff's Office,
Stephen W. Gaydos, Laura Moll, John and Jane Doe, John and Jane Smiths
#1 to #10, County of Niagara***
Case No.: 1:24-cv-00518-JLS-HKS

Dear Judge Sinatra:

Please allow this to serve as a joint letter motion, which is being made on behalf of defendants, Sheriff Michael J. Filicetti, Niagara County Sheriff's Office, Stephen W. Gaydos, Laura Moll, and County of Niagara (hereinafter referred to collectively as the "County Defendants"), who are being represented by the undersigned, and plaintiff, Kaitlynn Gannon (hereinafter referred to as "Plaintiff"), who is represented by Joseph J. Manna, Esq. of Lipsitz Green Scime Cambria LLP.

By way of brief procedural history, Plaintiff filed a complaint on April 25, 2024 against defendants, Sheriff Michael J. Filicetti (incorrectly sued as "Sheriff Michael J. Felicetti"), Niagara County Sheriff's Office, County of Niagara, and John and Jane Doe, in Supreme Court for the State of New York, County of Niagara, under index number E183240/2024 (the "State Action"). The aforementioned defendants removed the State Action on May 29, 2024 (Dkt. No. 1) and moved to dismiss the verified complaint on June 5, 2024 (Dkt. No. 6). Thereafter, Plaintiff filed a first amended complaint on June 26, 2024 against the County Defendants and John and Jane Doe and John and Jane Smiths #1 to #10 (Dkt. No. 10). Presently, the County Defendants' deadline to respond to the first amended complaint is July 10, 2024.

On June 26, 2024, the County Defendants requested Plaintiff's consent to seek an extension of time to respond to the first amended complaint. Plaintiff's counsel had no objection to an extension of time to respond to the first amended complaint, but requested that the County Defendants withdraw the pending motion to dismiss the verified complaint (Dkt. No. 6) and further requested that the parties propose a briefing schedule to the Court if the County Defendants

Honorable John L. Sinatra, Jr.
United States District Judge
United States District Court
Western District of New York
July 2, 2024
Page 2 of 2

intended to move to dismiss the first amended complaint. Our office advised that the County Defendants do intend to move to dismiss the first amended complaint and that we do not object to withdrawing the pending motion to dismiss the verified complaint (Dkt. No. 6) so long as doing so is not construed as a waiver of the County Defendants' right to file a motion to dismiss relative to the first amended complaint, and proposed a briefing schedule for the anticipated motion to dismiss the first amended complaint. Our office further proposed submitting a joint stipulated order to the Court reflecting the above. Plaintiff's counsel advised he is in agreement with this plan.

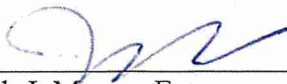
In light of the foregoing and in the interest of judicial economy, the parties are submitting a proposed joint stipulated order for the Court's consideration, which provides for an extension of time for the County Defendants to respond to the first amended complaint, the withdrawal of the pending motion to dismiss (Dkt. No. 6), and a briefing schedule for the County Defendants' anticipated motion to dismiss the first amended complaint.

Should the proposed joint stipulated order meet with the Court's approval, the parties respectfully request that it be so ordered. If the Court has any questions or concerns, we respectfully request the Court advise the parties as to same.

Respectfully submitted,

Brian P. Crosby, Esq.

Agreed to:



Joseph J. Manna, Esq.

BPC/edt

cc: *All parties of record via CM-ECF*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KAITLYNN GANNON,

Plaintiff,

v.

JOINT STIPULATED ORDER

SHERIFF MICHAEL J. FILICETTI
NIAGARA COUNTY SHERIFF'S OFFICE
STEPHEN W. GAYDOS
LAURA MOLL, and
JOHN AND JANE DOE
JOHN AND JANE SMITHS #1 TO #10
COUNTY OF NIAGARA

Civil Action No.: 1:24-cv-00518-JLS-
HKS

Defendants.

WHEREAS, plaintiff, Kaitlynn Gannon ("Plaintiff"), filed a complaint on April 25, 2024 against defendants, Sheriff Michael J. Filicetti (incorrectly sued as "Sheriff Michael J. Felicetti"), Niagara County Sheriff's Office, County of Niagara, and John and Jane Doe, in Supreme Court for the State of New York, County of Niagara, under index number E183240/2024 (the "State Action");

WHEREAS, the aforementioned defendants removed the State Action to this Court on May 29, 2024 (Dkt. No. 1);

WHEREAS, the aforementioned defendants moved to dismiss the verified complaint on June 5, 2024 (Dkt. No. 6);

WHEREAS, Plaintiff filed a first amended complaint on June 26, 2024 against defendants, Sheriff Michael J. Filicetti, Niagara County Sheriff's Office, Stephen W. Gaydos, Laura Moll, County of Niagara (collectively, "Defendants"), and John and Jane Doe and John and Jane Smiths #1 to #10 (Dkt. No. 10);

WHEREAS, Defendants' deadline to respond to the first amended complaint is July 10, 2024;

WHEREAS, Defendants requested Plaintiff's consent to seek an extension of time to respond to the first amended complaint;

WHEREAS, Plaintiff had no objection to an extension of time to respond to the first amended complaint, but requested that Defendants withdraw the pending motion to dismiss the

verified complaint (Dkt. No. 6) and further requested that the parties propose a briefing schedule to the Court if Defendants intended to move to dismiss the first amended complaint;

WHEREAS, Defendants intend to move to dismiss the first amended complaint;

IT IS HEREBY STIPULATED AND AGREED by and between the parties through their respective counsel as follows:

1. Defendants hereby withdraw the motion to dismiss the verified complaint (Dkt. No. 6). Said withdrawal shall be without prejudice and shall not be construed as a waiver of Defendants' right to move to dismiss the first amended complaint.

2. Plaintiff's agreement herein shall in no way be deemed as an admission or indication that she concedes that there is any merit to a motion to dismiss her first amended complaint.

3. The parties propose the following briefing schedule with respect to Defendants' anticipated motion to dismiss the first amended complaint:

Moving Papers: due by July 26, 2024

Opposition Papers: due by August 30, 2024

Reply Papers: due by September 27, 2024

4. The execution of this stipulation is not to be construed as a waiver of any defenses, jurisdictional or otherwise, that may be available to Defendants.

DATED: July 2, 2024

LIPSITZ GREEN SCIME CAMBRIA LLP

GIBSON, McASKILL & CROSBY, LLP

By: 

Joseph J. Manna, Esq.

Attorneys for Plaintiff

Kaitlynn Gannon

42 Delaware Avenue, Suite 120

Buffalo, New York 14202

Tel: (716) 849-1333

Email: jmanna@lglaw.com

By: _____

Brian P. Crosby, Esq.

Attorneys for Defendants

Sheriff Michael J. Filicetti, Niagara

County Sheriff's Office, Stephen W.

Gaydos, Laura Moll, and County of

Niagara

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Buffalo, New York 14202

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